

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

CIVIL APPLICATION NO. 86/08 of 2017

KHAMIS NDURWE.....APPLICANT

VERSUS

NYACHIRO BITURO.....RESPONDENT

**(Application for extension of time to appeal to the Court of Appeal from the
decision of the High Court of Tanzania at Mwanza)**

(Kalombola, J.)

Dated the 10th day of October, 2013

in

Misc. Land Appeal No. 92 of 2010

.....

ORDER

MWAMBEGELE, J.A.:

When the application was called on for hearing, only the applicant appeared. The respondent did not enter appearance. One Jossiah Wambura, who introduced himself as a son-in-law of the Respondent, intimated to the Court that she was sick and has travelled to Dar es salaam for treatment. Before we could go into the hearing of the application in the absence of the respondent, through Mr. Wambura, we learnt that the notice of appeal on which this application was anchored, was struck out by the Court on 09.07.2018 *vide* Civil Application No. 12/08 of 2016. Given the circumstances, prompted, the applicant prayed to withdraw the application, presumably under rule 58 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

I find no reason why I should not grant the prayer. Indeed, the notice of appeal on which this application is premised, was struck out by the Court on 09.07.2018 *vide* Civil Application No. 12 of 2008 which was by notice of motion taken out under rule 89(2) of the Rules.

This application has therefore no legs on which to stand in the Court. The same is hereby withdrawn under rule 58(3) of the Rules with no order as to costs.


Order accordingly.

DATED at **MWANZA** this 26th day of March, 2019.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL



I certify that this is a true copy of the original.


B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL